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मई दिल्ली, राजधानी, प्र० १०, १९८२/चैत्र २०, १९०४

NEW DELHI, SATURDAY, APRIL 10, 1982/CHAITRA 20, 1904

इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—पार्ट ३—उप-पार्ट (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्यकान्त्र प्रशासनों की छोड़ कर) संघीय प्राधिकारियों द्वारा जारी किए गए घावेश और प्रधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than
Administrations of Union Territories)

भारत निर्वाचन आयोग

मई दिल्ली, 5 सितम्बर, 1981

आ.अ. ६४.—लोक प्रतिनिधित्व अधिनियम, १९५१ (१९५१ का ४३) की धारा 106 के अनुसरण में निर्वाचन आयोग, १९८० की निर्वाचन अजी० सं. १ में दिया गया गोहाटी उच्च न्यायालय, अगरसला बैच, त्रिपुरा का तारीख ७ जूनाई १९८१ का आदेश प्रकाशित करता है।।

[सं. ८२/त्रिपुरा-लो. स./१/८०]
सतीश चन्द्र जैन, अवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 5th September, 1981

O.N. 64.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgement dated the 7th July, 1981 of the Gauhati High Court, Agartala Bench, Tripura in Election Petition No. 1 of 1980.

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR & TRIPURA AT AGARTALA)

Election Petition No. 1 of 1980

Kashiram Reang —Petitioner.
Vs.

Bajuban Reang & Others. —Respondents.

PRESENT :

The Hon'ble Mr. Justice N. Ibotombi Singh

1501 GI/81—1

For the petitioner—Mr. M. Majumdar, Mr. D. Purakayastha, Mr. D. K. Sarkar, Advocates.

For the Respondent No. 1—Mr. S. K. Ganguly, Mr. D. P. Kundu, Senior Advocates, Mr. B. Das, Mr. U. B. Saha, Advocates.

Dates of hearing—25th, 27th, 29th & 30th April, 11th to 15th May and 19th to 21st May, 1981.

Dates of Judgement and Order—7-7-1981.

ORDER

The election of Shri Bajuban Reang of East Bagasa, Belonia, P. S. South Tripura, Respondent No. 1 herein, the returned candidate from 2-East Tripura (S.T.) Parliamentary Constituency at the last mid-term election to the Parliamentary Constituencies held in January, 1980, is called in question in this Election Petition by Shri Kashiram Reang of Laxmichhara, P. S. Baikhora, District-Tripura South, an unsuccessful candidate at that election. Notification under section 14 of the Representation of the People Act, 1951 (hereinafter called the Act) was issued on 2-12-79 calling upon the said constituency to elect a member. Pursuant to the notification issued under section 30 of the Act, nomination papers of the candidates were filed on 8-12-79. There were five candidates in the fray. The petitioner was sponsored as a candidate by the Indian National Congress led by Smt. Indira Gandhi, and the election symbol of the party was the picture of 'a hand in upright position'. The Respondent No. 1 was sponsored as a candidate by the Communist Party of India (Marxist), and the party election symbol was 'Sickle, hammer and star'. The polling for the said constituency took place on 6-1-80 and the result of the election was declared on 8-1-80. The petitioner secured 44819 votes and the Respondent No. 1 secured 1,96,199 votes. The Respondent No. 1, Shri Bajuban Reang, who secured the highest number

of votes of all the contesting candidates, was declared elected as a Member of the House of People. The petitioner presented this Slection Petition under section 81 of the Act on 21-2-80 for declaring the election of Respondent No. 1, as void on various grounds of corrupt practices alleged to have been committed by Respondent No. 1 and/or his election agent and/or by other persons with the consent of Respondent No. 1. The petitioner besides asking for declaring the election of Respondent No. 1 void claimed that he be declared elected in his place. In the petition, Shri Nripend Chakraborty, Chief Minister of Tripura, was also impleaded as a party being Respondent No. 6. The Respondent No. 1 the Returned candidate and Respondent No. 6, contested the petition by filing written statements. Respondent No. 1 in his written statement traversed all the allegations made in the petition and denied the charges of the alleged various corrupt practices. It was pleaded, inter alia, that the petition is defective, not being verified in the manner laid down in the Code of Civil Procedure in compliance with Section 83(1)(c) of the Act, and not being accompanied by a proper affidavit in the prescribed form in support of the allegations of corrupt practices and the particulars thereof, in accordance with proviso to Section 83(1) of the Act, and that the petition does not contain a concised statement of the material facts on which the petitioner relies, as provided under clause (a) of sub-section (1) of section 83 of the Act, nor does it set forth full particulars of any of the alleged corrupt practices that the petitioner alleges, including a full statement of the names of the parties alleged to have committed such corrupt practice and the date and the place of the commission of each such corrupt practice, as provided under clause (b) of sub-section (1) of section 83 of the Act.

2. Shri Nripen Chakraborty, Chief Minister of Tripura, raised a preliminary objection that he is neither a necessary nor a proper party to the petition, and consequently his name be struck off. The Respondent No. 1 also raised legal pleas that the petition does not comply with the provisions of sections 81(3), 82 and 117 of the Act, and as such the petitioner was liable to be dismissed under section 86 of the Act. The legal pleas were heard together as preliminary issues; and the court by an order passed on 2-3-81 held that the Respondent No. 6 Shri Nripen Chakraborty, Chief Minister, Tripura, was neither a necessary nor a proper party, and, therefore, his name was ordered to be struck off under Order 1, Rule 10(2) of the Code of Civil Procedure, 1908, as amended, without, however, prejudice to his rights under proviso to section 99 of the Act in case he is to be named at the conclusion of the trial. By the same order, the other legal pleas raised by the Respondent No. 1 were decided against him and in favour of the petitioner. It may be mentioned that the petitioner by an application dated 18-8-80 sought amendment of the Election Petition and the court by its order passed on 28-11-80 allowed the amendment.

3. On the pleadings of the parties as many as 24 issues were framed; and subsequently Issue No. 6 was reframed and substituted by 4 issues being 6A, 6B, 6C and 6D. Altogether there are 26 issues. At the time of framing of issues, counsel for the petitioner has not pressed some of the allegation of corrupt practices. The allegations not so pressed were recorded in the order sheets. Separate issues were framed for each of the alleged corrupt practices pressed by the counsel for the petitioner. The issues are:—

1. Whether the petition is defective, not being verified and/or supported by affidavit, in accordance with law? If so, what is its effect?
2. Whether the allegations made in the following paragraphs of the petition are vague for want of material facts or particulars, in accordance with tax law? If so, are they triable at all? Paragraphs are: 9, 10, 12(a), 12(f), 12(g), 12(i) next to 12(j), 12(k), 12(u), (being the paragraph next to paragraphs 12(k), 12(m), 12(n), 12(o), 12(p), 12(r), 12(s), 12(t), 12(u), 12(v), 12(w), 12(z), 12(z-1), 12(z-2), 12(z-14), 12(z-15), 12(z-16), 12(z-18), 12(x), second part of 12(z-21) and 12(z-22)?
3. Whether the polling agents of Left Front Parties at the instance of Respondent No. 1 has agents and others and in collusion with the Left Front Parties committed the various acts, as alleged in para 9 of the petition, viz. preventing (a) the polling agents of the petitioner from challenging the identity of

the voters; and (b) identity of voters from impersonation, no step being taken either by the Presiding Officers or by the Police Officers?

4. Did the Left Front Party workers; at the instance of Respondent No. 1, and his election agents and others, during the period from 1st December, 1979 to 5th January, 1980, terrorise the Congress(I) workers, sympathisers and supporters, as alleged in para 10 of the petition?
5. If any of the issues 3rd and 4th above is answered in the affirmative, what is its effect? Is the result, in so far as it concern Respondent No. 1, has been materially affected and the election of Respondent No. 1 is liable to be declared void?
- 6A. Whether the Left Front Government led by C.P.I. (M), at the instance of Respondent No. 1 and the Chief Minister of Tripura with his Ministers and Respondent No. 7 with his Officers and employees, committed the acts, as alleged in paragraph 12(e), 12(f) and 12(g) to the petition? If so, whether the alleged acts amount to any corrupt practice within the meaning of section 123(1) of the R. P. Act, 1951?
- 6B. Whether the Left Front Government at the direction and influence of Respondent No. 1, his agents and Respondent No. 6, Chief Minister of Tripura and Respondent No. 7 with their Council of Ministers. Officers and employees illegally procured and stocked funds and foodgrains for the cause of victory of their official candidate. Respondent No. 1, as alleged in paragraph 12(i) of the petition? If so, whether the alleged act amounts to any corrupt practice as defined under section 123 of the R. P. Act, 1951?
- 6C. Whether the C.P.I.(M) party leaders, in collusion with the Gram Pradhans and officials, issued slips in advance to the village level workers and instructed them to vote for the Respondent No. 1 as alleged in para 12(g) next to 12(i)? Whether these acts were committed under the influence and direction of Respondent No. 1 and his agents? If answered in the affirmative, whether the alleged acts amount to corrupt practice of bribery and or undue influence within the meaning of section 123(1) and (2) of the R. P. Act, 1951?
- 6D. Whether any of the acts in Issue Nos. 6A, 6B and 6C were committed during the period between 1st December, 1979 to 6th January, 1980 with the full knowledge and sanction of the Respondent No. 1 and/or his election Agent?
7. Whether the Left Front Government or the Health Directorate, Government of Tripura, issued various offers of appointment letters to various persons with ulterior motive to influence unduly the voters with the assistance and connivance of Respondent No. 1 Chief Minister of Tripura and Respondent No. 7 and their officers and employees, to secure votes for the Respondent No. 1, as alleged in para 12(m) of the petition? If so, whether corrupt practice of bribery or undue influence, within the meaning of section 123(1) or (2) of the Act was committed and the election of Respondent No. 1 is liable to be declared void?
8. Whether after declaration of the date of election, the Left Front Government or any of its departments, at the instance of Respondent No. 1, in violation of the instructions issued by the Election Commission, with ulterior motive to influence the electors and to put pressure on the electors to vote for the Respondent No. 1, issued transfer orders to the employees under Government of Tripura not sympathetic to the cause of the Left Front Government, to face the consequence in case of non-compliance, as alleged in para 12(n) of the petition? If answered in the affirmative, whether any corrupt practice was committed, within the meaning of section 123(1) or (2) of the R. P. Act, 1951 and the election of the Respondent No. 1 is liable to be declared void?

9. Whether the Respondent No. 1 used Government vehicles during the period from 1st December, 1979 to 4th January, 1980, in collusion with the Left Front Government, the Chief Minister of Tripura, Respondent No. 7 and their Officers and Employees, as detailed in para 12(u) being the para next to para 12(k) of the petition in his election campaign ? What is its effect ? Is the election of Respondent No. 1 void ?
10. Whether the Left Front Government, with the connivance of or at the instance of the Respondent No. 1, the Chief Minister and Respondent No. 7 and their Officers and employees, released Govt. loans and grants etc. to voters from different Departments and also spent huge amount of money from public exchequer under the various schemes of the Tribal Welfare Department, on the eve of election with ulterior motive to influence and corrupt the tribal electors and to secure their votes in favour of the Respondent No. 1, as detailed in para 12(e) and (p) of the petition ? If so, whether the acts amount to corrupt practice of bribery or undue influence, within the meaning of section 123(1) and (2) of the R.P. Act, 1951? If answered in the affirmative in the election of the Respondent No. 1 liable to be declared void ?
11. Whether the Left Front Government committed the alleged acts, as detailed in para 12(r) to (w) of the petition in collusion with Respondent No. 1, the Chief Minister of Tripura and the Respondent No. 7 and his Officers, to influence the traders and to secure votes in favour of the Respondent No. 1? If so, do the acts amount to corrupt practice, within the meaning of bribery or undue influence under Section 123(1) or (2) of the R.P. Act, 1951 ? If answered in the affirmative, is the election of the Respondent No. 1 liable to be declared void ?
12. Whether the Left Government instead of assisting the Custom Authority to stop illegal market and sale of illegal imported goods in the Buttala market, Agartala, Tripura, intervened the Custom Authority not to interfere with them and/or threatened the Custom Authority not to interfere with the illegal market, with a view to gain a large number of votes in favour of Respondent No. 1 as detailed in para 12(u) and (v) of the petition ? Whether the acts amount to corrupt practice of bribery or undue influence, within the meaning of section 123(1) or (2) of the R.P. Act, 1951 ? If answered in the affirmative, is the election of the Respondent No. 1 liable to be declared void ?
13. Whether in a conference held on 11-10-79, the Left Front Government, instructed the Officers of the Government to extend all their co-operation to the C.P.I. (M) party during the period of election, within promise to remunerate them in case their official candidates including the Respondent No. 1 came out successful and the Chief Minister also directed the Officers of the State Government not to be impartial, as alleged in para 12(x) of the petition ? If so, whether the alleged act amounts to any corrupt practice within the meaning of section 123 of the Act and the election of the Respondent No. 1 is liable to be declared void ?
14. Whether the C.P.I.(M) workers, at the instance of Respondent No. 1, his agent and Left Front Government terrorise the voters to secure votes in favour of the Respondent No. 1 and threatened them also with consequences in case they do not caste votes in favour of Respondent No. 1, as alleged in para 12(z) and 12(z1) read with para 12(z-2) of the petition ?
15. If the issue 14 is answered in the affirmative, whether the voters were prevented from exercising their franchise fairly and freely and if so, what is its effect ? Is the election of Respondent No. 1 liable to be declared void ?
16. Whether Respondent No. 1 and/or his election agent and/or other persons with the consent of election agent and/or Respondent No. 1, caused mutilation of petitioner's election symbol "Hand", and published by wall painting statements which are false, to the knowledge of Respondent No. 1 and his election agent, and which Respondent No. 1 believed to be false or did not believe to be true, in relation to the personal character or conduct of petitioner, being statements reasonably calculated to prejudice the prospects of petitioner, as alleged in the second part of para 12(z-14), and thereby committed corrupt practice within the meaning of sub-section (4) of section 123 of the R.P. Act, 1951 ? If so, whether the election of the Respondent No. 1 is liable to be declared void ?
17. Whether the Left Front Govt. with the active connivance of Respondent No. 1 and his agents, released a big amount of Rs. 3,75,000.00 showing falsely date of sanction of money being 15-1-80, for purchase of 'Chadars' for selected poor and indigent persons, and issued the same, in collusion with the officials of Panchayat Raj Department sympathetic to the Left Front Government, to the electors to unduly influence them to cast votes in favour of Respondent No. 1, as alleged in para 12(z-18) of the petition, and thereby committing corrupt practice of undue influence or bribery, within the meaning of section 123(1) and 123(2) of the R. P. Act ? If so, whether the election of Respondent No. 1 is liable to be declared void ?
18. Whether Respondent No. 1 made corrupt practice, as alleged in the second part of paragraph 12(z-20) of the petition within the meaning of sub-section (3) and/or (3-A) of Section 123 of the R. P. Act, 1951 ? If so, whether the election of the Respondent No. 1 is liable to be declared void ?
19. Whether Respondent No. 4 and/or his election agent, committed corrupt practice, as alleged in the first part of paragraph 12(z-21) of the petition, within the meaning of sub-section (3) and/or (3-A) of Section 123 of the R. P. Act ? If so, is the election of Respondent No. 1 liable to be declared void ?
20. Whether Respondent No. 1 and/or Respondent No. 4 and/or their agents, committed corrupt practice, as alleged in the second part of paragraph 12(z-21) of the petition, within the meaning of sub-section (3) of Section 123 of the R. P. Act, 1951 ? If so, is the election of Respondent No. 1 liable to be declared void ?
21. Whether Respondent No. 1 and/or his agent committed corrupt practice of undue influence, as alleged in paragraph 12(z-22) of the petition, within the meaning of sub-section (2) of Section 123 of the R. P. Act, 1951 ? If so, is the election of Respondent No. 1 liable to be declared void ?
22. Whether Respondent No. 1 and/or his agent committed corrupt practice, as alleged in paragraph 12(z-22) of the petition, within the meaning of sub-section (3) and/or sub-section (3-A) of Section 123 of the R. P. Act, 1951 ? If so, is the election of the Respondent No. 1 liable to be declared void ?
23. Is the petitioner entitled to any of the reliefs claimed ?
4. On the prayer of the learned counsel of both parties, Issue Nos. 1 and 2 set out hereinbelow are taken up together as preliminary issues, before the parties lead evidence on the issues. The issues are :
1. Whether the petition is defective, not being verified and/or supported by affidavit, in accordance with law ? If, so, what is its effect ?

(2) Whether the allegations made in the following paragraphs of the petition are vague for want of material facts and/or particulars, in accordance with law ? If so, are they liable at all ?

Paragraphs are 9, 10, 12(e), 12(f), 12(g), 12(i), 12(g), next to 12(i), 12(k), 12(x), being the paragraph next to paragraphs 12(k), 12(m), 12(o), 12(p), 12(r), 12(s), 12(t), 12(u), 12(v), 12(w), 12(x), (z), 12(z-1), 12(z-2), 12(z-14), 12(z-15), 12(z-16), 12(z-18) second part of 12(z-20) and 12(z-22).

5. At the outset it may be stated that in course of the argument, learned counsel for the petitioner, in his reply, has given up the allegations in the petition except those mentioned in paras 12(e), (f), (g), (i) and 12(g) next to para 12(i) covered by Issue Nos. 6A, 6B and 6C and paras 12(z), (z-1) and (z-2) covered by Issue No. 14. Consequently, the allegations of corrupt practices covered by the other issues do not arise for consideration.

6. In Re-Issue No. 1-Counsel for the Respondent No. 1 contends that the petition has not been verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for verification of the pleadings, in compliance with clause (c) of sub-section (1) of section 83 of the Act. At the foot of the petition, the petition is verified as "The above statements are true to my knowledge and I sight this verification on 21st day of February, 1980, sitting at Agartala Court Premises". This appears not to be a proper verification. Under Order 6, Rule 15 of the Code of Civil Procedure, 1908, every pleading is required to be verified at the foot by the party or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and the person verifying shall specify by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true and such verification is required to be signed by the person making it with date and the place at which it was signed. In the verification of the Election Petition, it is noticed that the above requirements of verification have not been complied with. The statements in the petition are verified to be true to his knowledge, though the affidavit speaks otherwise in which it is stated some of the statements in the paragraphs of the petition are based on his knowledge and some on information received from others. Viewed from that angle the verification is defective. However, the Election Petition cannot be dismissed for such defect in the verification.

7. The object of verification is to test the genuineness and authenticity of the allegations and to fix on the party verifying the responsibilities for the statements that he makes. The Supreme Court in Virender Kumar Saklecha vs. Jagiwan and others, AIR 1974 SC 1957, reaffirmed the principle of law laid down in the earlier decisions of the Supreme Court in regard to the importance of the verification (i) State v. Purushottam Jog Naik, AIR 1952 SC 317, (ii) Bariaum Chemicals Ltd. of Bombay v. Company Law Board, AIR 1957 SC 295, and (iii) A.K.K. Nambiar v. Union of India, AIR 1970 SC 652. It was observed at para 14 (of AIR 1974 SC 1954), "The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will be an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered.

8. The Supreme Court in the case of Krishna Chander v. Ram Lal, AIR 1973 SC 2513, dealt with the question as to whether sources of information are required to be mentioned in the affidavit in Form 25 prescribed under Rule 94-A of the Conduct of Election Rules, 1961, and held that the provision for setting out the sources of information where

the allegation have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which is applicable to the filing of an election petition. It was held that there is nothing in Form No. 25 which requires the petitioner to state under clause (b) of Form No. 25 the source or sources of his information, because when there are specific Rules made under the Act which govern the election petition, no other Rules are applicable, nor is the disclosure of the source of information a requisite under Order 6, Rule 15(2), C.P.C.

9. The two decisions of the Supreme Court reported in Krishna Chander (supra) and Virender Kumar Saklecha (Supra) apparently appear to be in conflict on this point; but to my mind, it is not so, what was held in Krishna Chander, as already stated, is that to set forth the sources of information where the allegations have been verified as having been made on information is not requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, and the allegations of corrupt practice made in the petition cannot be ignored on the ground that the sources of information have not been disclosed. In the letter case in Virender Kumar Saklecha (supra), the purpose of the disclosure of the sources of information in the election petition is pointed out, and nonetheless it was held that the allegations of corrupt practices could not be ignored. It was held that failure to conform to Rule 9 and 7 of the Madhya Pradesh High Court Rules could not be held to be fatal to the election petition. What was observed is that it would be helpful in assessing the value of the evidence. I hold that the verification is defective as pointed out above, but the allegations of corrupt practices cannot be ignore merely on the ground that the source of information is not disclosed, when the allegations are based on information as it is not a requirement of law as prescribed under Rule 94-A read with Form No. 25 of the Conduct of Election Rules 1961.

10. It is also settled law that even there is any defect in the verification, the Election petition cannot be dismissed for such defect. If there is defect in the verification, the petitioner may be called upon to remove the lacuna by a supplementary verification. I am fortified in this view by the decision of the Supreme Court in Vihakji Kashao Joshi v. Brijlal Nand Lal Viyani, AIR 1955 SC 610. The contention of the learned counsel for the Respondent No. 1 on the question of defect in the verification is negated.

11. It has been vehemently urged by the learned counsel for the Respondent No. 1 that the petition is not accompanied by an affidavit in the prescribed form No. 25 of the Conduct of Election Rules, 1961, made under Rule 94-A of the said Rules, in support of the allegations of the alleged corrupt practices and the particulars thereof made in the petition, in accordance with the proviso to sub-section (1) of section 83 of the Act. It is urged that two paragraphs, viz. 12(e) and 12(z-2) with which I am concerned, are based both on information and knowledge of the petitioner, and (ii) particular corrupt practice alleged to have been committed as shown in the asterisk mark of Form No. 25, has not been specified. Counsel refers also to sub-rule (c) of Rule 1 of the Rules of the Gauhati High Court in Chapter VIII-A, which provides that an affidavit in support of the contents of the petition as prescribed in section 83(1)(c) of the Act where necessary, shall accompany the petition and Rule 27 of Chapter IV of the Gauhati High Court Rules which provides that when the particular fact is stated from information obtained from others, the declarant must also state the source from which he received such information. Reference to the Rules of the Gauhati High Court, according to the counsel, is to show that the affidavit is not in accordance with the Rules of the High Court and Form No. 25 of the Conduct of Elections Rules, 1961.

12. It is contended that the defects pointed out above are not formal but they strike at the root of the petition because affidavit is a part of the Election Petition, as contemplated under sub-section (1) of section 83 of the Act, which is held to be mandatory in various cases by the Supreme Court. Reliance is placed on the decision of the Supreme Court reported in AIR 1969 SC 1201 S. N Balakrishna v. Fernandez, for the preposition that section 83 of the Act is mandatory. In support of the contention that affidavit is a part of Election Petition reliance is placed on a decision of the Supreme Court in M. Mamalam v. V.A.S. Mohammed AIR 1978 SC 840.

13. It is further submitted that section 83 of the Act has the binding force of Constitution-ALREADY PRESCRIBED PROCEDURE, in view of clause (b) of Article 329 of the Constitution and that proviso to sub-section (1) of section 83 of the Act, which is an integral part of election petition, be strictly complied with and consequence of non-compliance is that the allegations of alleged corrupt practices not supported by proper affidavit in Form No. 25, be ignored and not put on trial, the petition not being election petition, as contemplated under section 83 of the Act. In that context, counsel refers to the observation of the Supreme Court at para 587, in Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299. It was observed.

"In exercise of its powers under Art. 329(b) our Parliament had enacted the Act of 1951. The procedure provided by the Act had the binding force of a constitutionally prescribed procedure. It could not be circumvented unless, with reference to cases covered by Art. 329 A(4), it had been first repealed."

14. The contention of the learned counsel does not require close scrutiny. First, if every provision of section 83 of the Act is held to be mandatory, clause (3) of sub-section (1) of section 83 of the Act which prescribes for verification of the petition is also to be construed similarly, it being a part of the election petition, but such is not the level position. I have also held that the defect in the verification is not fatal to the election petition. Secondly, in view of the decision of the Supreme Court in Krishna Chander (supra) and Virendra Kumar, (supra) non-disclosure of the source of information in the affidavit and non-compliance of the Rules of the Gauhati High Court as to the form of the affidavit which requires that the source of information should be disclosed, is not fatal to the petition. Nor is the defect in the affidavit fatal to the petition. Thirdly, the observation of the Supreme Court at paragraphs 587 in Srimati Indira Nehru Gandhi (supra), on which reliance is placed, has no material bearing on the point in issue. In that case, the validity of clauses 4 and 5 of Article 329-A of the Constitution of India, as inserted by the Constitution 39th (Amendment) Act, 1975, was questioned. Clause 4 sought to validate the election of Srimati Indira Gandhi, which was held void by the High Court in the petition tried in accordance with the provisions of the Representation of the People Act, 1951. The Supreme Court struck down clause 4 as void as it was a legislative judgment in exercise of judicial power. An attempt was made by the learned counsel for Smt. Indira Gandhi to uphold the validity of the impugned clause by invoking the presumed exercise of some judicial powers imported by Article 105(3) of the Constitution. Repelling the argument, the Supreme Court held that what was not conferred upon Parliament itself, in its constituent capacity, could not be impliedly assumed to be there by virtue of certain powers, privileges and immunities which belong separately to each House of Parliament. It was further held that what is sought to be derived from Article 105 is in conflict with the provisions of Article 329(b) of the Constitution which provides that election dispute can only be resolved by an election petition before the forum as provided by an ordinary enactment. It was in that context the Supreme Court made the above observation. The concluding portion of the observation at para 587 makes it clear, namely, "it could not be assumed, by reason of Article 105(3), that the prescribed forum had shifted to Parliament itself and that Parliament, in exercise of its constituent function, had both legislated and adjudicated". Fourthly, in sub-section (1) of section 86 of the Act, only sections 81, 82 and 117 of the Act are mentioned. It leads to the irresistible conclusion that such a defect is not fatal to the election petition. In view of the discussion above, I hold that the defect in the affidavit in the instant case by itself is not fatal to the petition. This issue is answered against the Respondent No. 1 and in favour of the petitioner. The impact of the defect in the affidavit, if any, will, however, be considered in deciding Issue No. 2.

15. In Re Issue No. 2. The allegations in paragraphs 12(e), 12(f) and 12(g) of the petition relate to alleged corrupt practices of "Undue influence" and/or "Bribery" within the meaning of section 123(2) and Section 123(1) of the Act. Paragraphs 12(e), (f), (g) and 12(k) are reproduced below:-

12(e) The Respondent No. 1 being a Minister of Left Front Govt., the Left Front Govt. led by C.P.I-(M) used Government machinery including expending funds from public exchequer unduly influenced the electors and/or bribed them thereby in various ways in favour of their candidates Respondent No. 1 and these illegal acts were done at the instance of Respondent No. 1 and Respondent No. 6 with his Ministers and Respondent No. 7 with his officers and employees as mentioned hereinafter.

12(f) The food-for-work is purely conducted by the official of the Left Front Govt. with the publicity that these are given only by them, concealing the real source of the scheme which enable the ruling C.P.I. (M) party to gain and influence on the minds of poor and backward people of the territory and thereby unduly influenced the voters and/or bribed them as herein before stated and as stated hereunder.

12(g) The labourers in "Food-for work" labourers ordered by their C.P.I.(M) leaders and work charged Govt. Employees to attend the meeting and they were paid under the scheme for attending meetings, processions instead of their daily work. It was a common scheme before election that whenever a public meeting was called in support of the Respondent No. 1, these 'Food for work' workers used to join meeting with posters, festoons and slogans in support of the candidate Respondent No. 1.

12(i) * * *

12(j) * * *

12(k) That these corrupt practices regarding "Food for work" which unduly influenced the voters and/or bribing took place between 1st December, 1979 to 6th January, 1980, and these were done with full knowledge and sanction of the Respondent No. 1 and/or his election agent."

16. The allegations read as a whole would reveal that the author of this election offence, either undue influence or bribery, is "Left Front Government" led by C.P.I. (M), at the instance of Respondent No. 1, returned candidate and the Chief Minister of Tripura with his council of Ministers and Respondent No. 7 with his officers and employees. It has not been pleaded that the Left Front Government was the agent of the Respondent No. 1. There can be no two opinions that the State Government is not a person as defined by Section 3(42) of the General Clauses Act, 1897. In H.V. Camath v. C.H. Nitraj Singh, AIR 1970 SC 211, the Supreme Court held that the State Government cannot be held to have acted as agent of the Respondent No 1 for commission of the alleged election offence of bribery' within the meaning of section 123(1)(A) of the Act.

17. It has not been specifically pleased whether the Respondent No. 1 was charged with the alleged corrupt practice of 'bribery' or 'undue influence'. The essential ingredients of these two election offences are different. The petitioner being in doubt about the nature of the alleged corrupt practice has not named the stub-head of the corrupt practice of section 123 of the Act, either 'bribery' or 'undue influence', in compliance with Form No. 25, wherein the head of the corrupt practice was to be specified. 'Undue influence' as defined in Section 123(2) of the Act has a specific connotation. The gist of 'undue influence' at the election, as defined in Section 123(2) of the Act, consists in "direct or indirect interference or attempt to interfere" on the part of the candidate or his agent or of any other person with the consent of the candidate or his agent, "with the free exercise of any electoral right". In the case of Babu Rao Patel and ors. v. Dr. Jakir Hussain and ors. AIR 1968, SC 904, the Supreme Court had the occasion to consider sub-section (2) of section 18 of the Presidential and Vice Presidential Election Act 1952, which lays down that 'undue influence' has the same meaning as in Section 171-C of the Indian Penal Code in Chapter IXA of the Indian Penal Code. The language of 'undue influence' as defined in the Act is similar to that employed in Section 171-C of the Indian Penal Code. The only difference is that in place of word 'voluntary' appearing in Section 171 of the Indian Penal Code, it is substituted by the word "direct or indirect" in Section 123(2)

of the Act. It was observed in para 17 of the reported case that 'undue influence' as defined in Section 171-C Indian Penal Code consists in voluntary interference or attempt to interfere with the free exercise of any electoral right. Even though the definition in sub-section (1) of Section 171-C is wide in terms, it cannot take in mere canvassing in favour of the candidate at an election. What is contained in sub-section (2) of Section 171-C is merely illustrative and cannot cut down generality of provisions in Section 171-C (1). As Sub-section (3) of 171-C shows, the mere exercise of legal right without intent to interfere with an electoral right would not be an 'undue influence'. It was also held by the Supreme Court in the case of Aad Lal Vs. Kunshi Ram AIR 1980 SC 1358, that there must be allegation in the petition that there was any direct or indirect interference or attempt to interfere with the free exercise of any electoral right. Such an allegation which is an essential ingredient of corrupt practice under sub-section (2) of Section 123 of the Act has not been pleaded in the present petition to bring home the charge of the alleged corrupt practice of undue influence.

18. An analysis of Section 123(2) of the Act would show that two conditions are to be satisfied, namely, (1) the act complained of exceeds the limit of persuation, and it contemplates elements of compulsion of any sort in any manner including appeal to those matters mentioned in Clause (a) (i) and (ii) of Section 123 (2) of the Act; and (2) 'compulsion' is so used by the candidate or his agent or by any other persons with the consent of the candidate or his election agent. When we read Section 100 (1)(b) of the Act together with Section 123 (2) of the Act, it will be seen that commission of any 'corrupt practice' is a ground for declaring the election void, if the act is committed by the returned candidate or his election agent, or by any other person with the consent of the returned candidate. If the alleged offence of corrupt practice of 'undue influence' was committed by any other person. It is to be pleaded that it was committed with the consent of the returned candidate as to make the candidate vicariously liable for the Act of that person. No such pleading has also been made in the petition. Again when we consider Section 123 (2) along with the Section 100 (1)(d)(ii) of the Act, it is quite apparent that the Act must be committed by any agent other than his election agent without the consent of the returned candidate in the interest of the returned candidate. In that case there must be averment in the petition that the result of the election, in so far it concerns the returned candidate, has been materially affected. So such pleading also has been made that the result of the election in so far it concerns Respondent No. 1, the returned candidate, has been materially affected by the alleged acts enumerated in Clauses (e) (f) and (g) of para 12 of the petition. See also Ram Dial Vs. Smt. Lal and ors. AIR 1959 SC 855. There is no pleading of element of 'compulsion' in the present petition.

19. What is alleged in Clause (f) is that the official of the Left Front Government made publicity of the 'Food for work' Scheme. Publicity has been so made as if the scheme was given only by the Left Front Government concealing the real source of the scheme, enabling thereby the Ruling C.P.I. (M) party to gain and influence the minds of the poor and backward people of the territory. It is, however, not stated what is the real source of the scheme and in what way 'undue influence' was exercised on the voters and how it interferred directly or indirectly with the free exercise of the electoral rights of the poor and backward people of the territory. Not a word also is whispered in this allegation that the poor and backward people of the territory on whom 'undue influence' was said to have been committed were electors of that constituency. Undue influence is to be exercised with the free exercise of any electoral rights of the voters. Clause (g) consists of two parts. In the first Part, it is alleged that the labourers in 'Food for work' scheme, who attended meetings and processions, were paid under the scheme without any daily work. In the second Part, it is alleged that it was common scheme before election that whenever a public meeting was called in support of the Respondent No. 1 those 'Food for Work' workers used to join meeting with posters, fastoons and slogans in support of Respondent No. 1. It is seen that there is no averment at all that any act was committed to interfere directly or indirectly with the free exercise of any electoral right of the labourers in 'Food for Work' scheme, who are said

to have been paid under the scheme for attending meetings and processions instead of their daily work. It has not been alleged that the meetings and processions were made in support of the Respondent No. 1. In the second part of clause (g) it is, however, alleged that there was a common scheme before election that whenever a public meeting was called in support of the Respondent No. 1, those 'Food for work' workers used to attend meetings with posters and slogans in support of the candidate, Respondent No. 1. It has, however not been alleged that those 'Food for work' workers were paid for doing the acts alleged therein, though they have not done their daily works. The allegations in clause (8) on corrupt practice of 'undue influence', which consists of two parts, as discussed above, are to be strictly construed. The acts alleged here are quite distinct and separate. It has also not been pleaded that those workers are voters of the constituency. The allegations in clauses (e), (f) and (g) of para 12 mentioned above, do not, as such, contain concise statements of material facts on which the petitioner relies, in compliance with Section 83(1)(a), of the Act to furnish a cause of action.

20. It was laid down by the Supreme Court in the case of Jagannath Vs. Jaswant Singh AIR 1954 SC 210 that the Statutory requirement of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is purely statutory proceeding unknown to the common law and that the court possesses no common law power; that it is a sound principle of natural justice and the success of a candidate who has won at an election should not be lightly interferred with and any petition seeking such interference must strictly conform to the requirements of the law, in the case of C.H. Subba Rao V. Member, Election Tribunal, Hyderabad and ors, AIR 1964 SC 1027, it was also held that an election petition is not to be equated to an election at law or in equity, but as the rights are purely the creature of statute, if the statute renders any particulars requirement mandatory, the courts possess and can exercise no dispensing power to waive non-compliance.

21. In the case of Samant No. Bala Krishnan etc. V. George Fernandez and ors. AIR 1969, SC 1201, it was held that Section 83 is mandatory and requires the election petition to contain first a concise statement of the material facts and then requires fullest possible particulars; the word 'material' shows that the facts necessary to formulate complete cause of action must be stated, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad: the function of particulars is to present a full picture of the cause of action with such further information as to make the opposite party understand the cause he will have to meet; there may be some overlapping between material fact and particulars, but the two are quite distinct; the material fact will show the ground of corrupt practice and complete cause of action and particulars will give the necessary information to present the full picture of cause of action. It was further held that in stating the material facts it will not do merely to quote the words of section because then efficacy of the word "materials facts" will be lost; the facts which constituted the corrupt practice must be stated and the facts must be correlated to one of the heads of corrupt practices, an election petition without the material facts relating to a corrupt practice is not election petition at 11; and an election petition which merely cites the sections cannot be said to disclose a cause of action.

22. The same principle was reiterated by the Supreme Court in the case of Hardwari Lal Vs. Kanwal Singh, AIR 1972 SC 515 and Udhav Singh v. Madhab Roy Scindia, AIR 1976 SC 744. The consequences of absence of such allegations of material facts in the election petition was also pointed out in those cases. In George Fernandez's case the Supreme Court approved the observation made by Scott, L.J. about the Distinction between the material facts and particulars. In the case of Bruce V. Odharna Press Ltd. (1936) I.K.B. 697, Scott, L.J. while pointing out the distinction, observed at page 711 :

"That order draws no express line or demarcation between the two and I am not sure that in some of the judgments in the reported cases the distinction between the two has always been kept as clear as is desirable but it is beyond question that there is a radical distinction and nonetheless so that in cases near the dividing line there is a penumbra where the two may and often do overlap just as between night and day there is a zone of doubt which we call dusk."

23. The allegation in para 12(a) shows that the alleged act was committed at the instance of Respondent No. 1. But in para 12(K) which appears to control it, it is alleged that the alleged act of corrupt practice relating to "Food for work" was committed with the full knowledge and sanction of Respondent No. 1 and or his election agent. Thus it is quite evident that the alleged act which was said to have been committed by the Left Front Government was done with the consent of Respondent No. 1. Material facts are therefore, necessary to be stated to show that it was done with the knowledge and sanction or at the instance of Respondent No. 1 as to constitute consent, express or implied, of the Respondent No. 1. Such material facts are not stated in these paragraphs. I am not oblivious of the principle of law that a pleading has to be read as a whole to ascertain its true import and it is not permissible to cut out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words, or change of its apparent grammatical sense and the intention of the concerned is to be gathered, primarily from the tenor and terms of his pleading taken as a whole. The pleading in Clauses (e) to (g) reads as a whole in conjunction with para 12(K) of the petition leads me to the irresistible conclusion that no material facts as to constitute cause of action for the alleged corrupt practice of 'undue influence' within the meaning of Section 123(2) of the Act are stated in the petition. It is as such not necessary for me to discuss the question as to whether the allegation in para 12(K) of the petition satisfied the requirement as contemplated in Clause (b) of sub-section (1) of Section 83 of the Act.

24. Turning to the question as to whether the alleged corrupt practice of bribery within the meaning of Section 123(1) of the Act can be called out from the allegations in para 12(e) to (f), it is seen that apart from the infirmity discussed above that the author of the alleged election offence of bribery is the State Government, it has not been pleaded that there was a 'bargain' between the author of the alleged corrupt practice of 'bribery' and the voters and that the State Government did what is alleged to have done in clauses (e) (f) and (g) for that reason. Thus there is no such allegation of 'bargain', a material fact which is required to be stated for the charge of corrupt practice of 'bribery' within the meaning of Section 123(1) of the Act. See Ghasi Ram V. Dal Singh AIR 1968 SC 1191, Om Prabha V. Abnash Chand AIR 1968 SC 1183, Chaitayan Kr. Aditiya V. Smt. Sushila Dixit AIR 1975 SC 1718 and Hariit Singh Munn V. S. Umrao Singh AIR 1980 SC 701. There is no allegation that a gift, offer or promise was made as reward to the voters with the object directly or indirectly to induce the electors to vote for the Respondent No. 1. Material facts necessary to be ascertained about the relationship between the State Government and the Respondent No. 1 to make the Respondent No. 1 vicariously liable for any act committed by State Government have not been pleaded, as discussed already while dealing with the question of the corrupt practice of 'undue influence'.

25. For the reasons given above I hold that no material facts are alleged in para 12(e) to (f) of the petition as to furnish cause of action either for the alleged corrupt practice of 'bribery' within the meaning of Section 123(1), or 'undue influence' within the meaning of section 123(2) of the Act. The allegations in those paragraphs, therefore, will not go to trial and they are liable to be struck out under Order 6, rule 16 of the Civil Procedure Code.

26. I next deal with the allegations in para 12(i) of the petition which is reproduced below :—

"That the Left Front Govt. illegally procured and stocked funds and Food grains before election showing fictitious work done under the scheme in collusion with the officials of the Govt, and these illegally procured fund and food grains were used actually before election for the cause of the victory of their official candidates Respondent No. 1 and these things has been done at the direction and influence of Respondent No. 1, his agents and Respondent No. 6 and Respondent No. 7 with their Council of Ministers, Officers and Employees."

27. The Left Front Government is alleged to be the author of the election offence. It is alleged that the Left Front Govt. procured and stocked funds and food grains before election showing fictitious work done under the scheme in collusion with the officials of the Government and the same were used before election for cause of victory of the official candidate, Respondent No. 1. The alleged act was said to have been committed at the direction and influence of Respondent No. 1 his agents and Chief Minister of Tripura and Respondent No. 7 and their Council of Ministers and employees. The allegations on their face value do not disclose any cause of action. These is no pleading of 'bargain' or 'reward', nor is there any pleading that the stock of food grains was distributed free or as a reward to the voters of the constituency with the object, directly or indirectly, to induce them to vote for Respondent No. 1. It is not alleged as to how the food grains were used, whether it was sold out right or the quota was increased or doled out and if so, to whom. It has not been pleaded that the Left Front Government was the agent of the Respondent No. 1 and that the Left Front Government acted as agent of the Respondent No. 1. In George Fernandez (supra) at page 1219, AIR 1969 SC 1201, the Supreme Court observed :

"....an agent cannot make the candidate responsible unless the candidate has consented or the act of agent has materially affected the election of the returned candidate in the case of any person, he may be an agent if he does with the consent of returned candidate."

28. The allegation in para 12(i) appears to be controlled by the allegation in para 12(k) already reproduced. According to allegation in para 12(k), the alleged corrupt practices relating to 'Food for work' scheme were said to have been committed to inflence or bribe the voters during the period between 1st December, 1979 and 6th January, 1980. The alleged corrupt practices were said to have been committed with the full knowledge and sanction of Respondent No. 1 and or his election agent, whereas in the last part of para 12(i) it is stated that the alleged corrupt practices were committed at the direction and influence of Respondent No. 1, his agents and Chief Minister of Tripura and Respondent No. 7 with their Council of Ministers and employees. It is difficult to ascertain as to who gave consent to the alleged act committed by the Left Front Government. I have already discussed the requirement of the material facts to be stated in the petition in regard to the charge of the corrupt practice of 'bribery' or 'undue influence', while dealing with the allegations in para 12(e) (f) and (g) of the petition.

29. The material facts to constitute the charge of corrupt practice alleged are also not stated in para 12(i). For these reasons above, the allegation in para 12(i) also will not go to trial, and they are liable to be struck out under Order 6, Rule 16 of the Civil Procedure Code.

30. Para 12(g) next to para 12(i) may now be considered. It recites as :—

"Para 12(g) That 3 days prior to the date of the poll in the rural area, C. P. I. (M) party leaders in collusion with Gram Pradhans and officials, issued three days slip in advance to the village level workers under "Food for work" programme and instructed them to vote for the official candidate, Respondent No. 1 and these things were done under the influence and direction of Respondent No. 1 and his agents".

31. It appears that para 12(g) has been wrongly numbered. It should be numbered as 12(j) and it is read as such. The corrupt practice was alleged to have been committed by the C. P. I. (M) party leaders in collusion with Gram Pradhan and Officials under the influence and direction of Respondent No. 1 and his agents. Here also para 12(k) of the petition appears to control the allegation in para 12(j). When these two paras are read together it is also not definite as to whether the alleged acts were committed under the influence and direction of Respondent No. 1 and his agents, as mentioned in para 12(j) or with the full knowledge and sanction of Respondent No. 1 or his election agents. Moreover, there is no allegation that the slips said to have been issued to the village level workers

under "Food for work" scheme are estimable in money as to constitute 'gratification' as defined in the Explanation to Section 123(l) of the Act. To constitute the corrupt practice of bribery, it is the gift, offer or promise of any gratification made by the persons named in sub-section (1) of section 123 of the Act, to any person whomsoever, with the object directly or indirectly inducing voters to vote or refrain from voting at an election. It is nowhere alleged that the village workers to whom the slips were said to have been issued are voters for the constituency and the same were issued to them with the object directly or indirectly inducing the electors to vote for Respondent No. 1 nor has it been pleaded as to whether slips were given as gift, offer or promise, as to constitute corrupt practice of bribery within the meaning of Section 123(i) of the Act. The allegations can not also be brought within the mischief of 'undue influence', as defined under Section 123(2) of the Act. No allegation has been made in this paragraph that the issue of the slips was made to interfere directly or indirectly or any attempt to interfere with the free exercise of any electoral right of the electors. The law on the subject of the undue influence had already been discussed while dealing with paragraphs 12(e), (g) and (f). As discussed therein, the element of 'compulsion' of any sort in any manner, which is required to be pleaded for the corrupt practice of 'undue influence' is also absent in the case. It may be recalled at this stage that respondent No. 1 in his written statement filed on 31-7-80 pleaded, inter alia that no material facts and particulars of alleged corrupt practice, as required u/s 83(i), (a) and (b) of the Act are made in the petition. The court ordered on 4-9-80 that the petitioner might file further particulars, if any, in respect of the alleged corrupt practice, as pleaded by the Respondent No. 1 and any petition furnishing further particulars, if any, of the alleged corrupt practice would be considered on 6-10-80. There was no sitting of the court on 6-10-80, but the court took up the case on 24-11-80. The petitioner has not at all filed any particular of the corrupt practice in the petition. In the affidavit annexed to the petition, it is stated that the allegation in para 12(i) of the petition is based on the knowledge of the petitioner. That being so, the petitioner should have mentioned the names of the C.P.I. (M) leaders, who are said to be the authors of the election offence. The statement "C.P.I. (M) leaders" appearing in Section 12(j) is too vague and indefinite. Apart from the non-disclosure of the names, the number of C.P.I. (M) leaders has not been mentioned. Omission to specify the number of author of the alleged election offence fails within the domain of material facts' under clause (a) of Section 83(1) of the Act and not under Clause (b). It is also not alleged as to whether the alleged act said to have been committed three days prior to the date of poll which took place on 6-1-80 was committed in a single transaction or series of transactions, nor has it been pleaded as to the number of the village level workers on whom the three days slips in advance were said to have been issued. It appears that the petitioner, not being sure of the nature of the corrupt practice mentioned in para 12(j) of the petition, avoided mentioning of the specific sub-head of the corrupt practice in his affidavit in Form No. 25 annexed to the election petition. The allegations cast a very wide net, and they lack in preciseness and definiteness. There cannot be a probing inquiry into such allegations which are lacking in material facts. The Respondent No. 1 will not be in a position to know the specific allegation which he is to meet in his defence. It is settled law that material facts are to be stated showing consent or agency as to render Respondent No. 1 liable vicariously for the acts committed by others. That the act was done at the direction and influence or sanction is not a pleading at all, unless the facts are stated to show, the consent of sanction of Respondent No. 1, because 'mens rea' or a guilty mind as well as an 'actus reus' or a wrongful act must concur to produce the result contemplated under Section 123 (1) or (2) of the Act. As the charge of corrupt practice is on the same footing as a criminal charge, the words which define it is to be strictly and narrowly construed. See observation of Beg J at Para 411 of AIR 1975 SC 2299 (Smt Indira Gandhi) considered from all possible angles I hold that the allegations in para 12(i) of the petition are lacking in material facts in regard to the charge of corrupt practice of 'bribery' or 'undue influence' within the meaning of Section 123(1) or (2) of the Act. The allegations, therefore, will not go to trial and are liable to be struck out under Order 6 rule 16 of the Civil Procedure Code.

32. The allegations in para 12 (z), 12(z-1) read with para 12(E-2) of the petition may be considered. Para 12(z) (z-1) and (z-2) run as follows :—

"12(z) That the C.P.I. (M) workers terrorised the voters to cast their votes in favour of the Respondent No. 1 and they threatened the voters that they will be in a position to know from the signature and thumb impression whether the voters have cast their votes in favour of their candidate the Respondent No. 1 and if they do not vote for their candidate, Respondent No. 1 they will be subjected to serious torture as the Left Front Govt. would be still in power in the State of Tripura, even after election and Minister Respondent No. 1 will remain Minister of the Left Front Govt.

12(z-1) That in order to substantiate their terrorism and corruption, office of the Chief Electoral Officer under political pressure made many booths with minimum number of votes. Many booths were constituted with only 95 votes specially in the areas where the sympathisers of Congress (I) reside. Voters of these booths have been threatened by the C.P.I. (M) workers that his minimum of voters in booths have been created only to direct how many persons have cast their votes in favour of their official candidate, Respondent No. 1.

- 12(z-2) That under such undue pressure and terrorism created by the C.P.I. (M) workers at the instance of the Respondent No. 1 his agents and the left Front Govt. voters could not exercise their franchise freely and fairly."

33. The allegations are :—(i) the C.P.I. (M) workers terrorised the electors to cast vote in favour of Respondent No 1 as alleged in para 12(z); (ii) booths with only 95 votes specially in the areas, where the sympathisers of the Congress (I) reside, were opened by the Chief Election Officer under Political pressure and the voters of those booths have been threatened by the C.P.I. (M) workers to SECURE votes in favour of the Respondent No. 1, as alleged in para 12(z-1) of the petition; (iii) this undue pressure and terrorism by the C.P.I. (M) workers was made at the instance of the Respondent No. 1, his agents and the Left Front Govt. and (iv) the voters have not exercise their franchise freely and fairly.

34. The allegation in substance is a charge of 'undue influence' within the meaning of Section 123(2) of the Act. There is no averment of the material facts that the alleged acts were done with the consent of the Respondent No. 1. The expression "at the instance of" cannot be construed as "a consent". The alleged authors are the C.P.I. (M) workers, who are said to have committed the act at the instance of Respondent No. 1, his agents and the Left Front Government. As alleged in para 12(z-2), it is not definite as to whether every act alleged in para 12(z-1) was committed at the instance of Respondent No. 1 his agents and the Left Front Govt. either collectively or individually. The acts alleged in paras 12(z) and 12(z-1) are quite distinct and independent. There is no allegation also as to whether the alleged acts of terrorism were committed in one transaction or different transactions, and whether the terrorism was committed on the same or different electors and at different places. Nor is there any material fact about the manner in which terrorism was alleged to have been committed. The statement that 'A' committed acts of terrorism is only an inference. It does not furnish a complete cause of action. What is required to be stated are the basic material facts from which inference is to be drawn that 'A' committed the alleged acts of terrorism. The allegations are too vague and indefinite. Here also the petitioner has not

There cannot be any robing inquiry into such allegations, which are lacking in material facts. Besides omission to state the material facts, no particulars at all of the corrupt practice alleged in the petition are given. It is a case of complete omission of the particulars of corrupt practice alleged in the petition. The same reasoning as in the allegation of para 12(j) wrongly numbered as 12(g) next to 12(i), applies "a fortiori" to these allegations also.

35. In view of the foregoing discussions, the allegations which are devoid of material facts, will not go to trial and the same are liable to be struck out under Order 6 Rule 16 of the C.P.C.

36. The result of my finding in Issue No. 2 is that the allegations in paras 12(e), (f), (g) (i) and 12(g) next to

(i) covered by Issue No. 6A, 6B and 6-C and paras 12(z) (z-1) and (z-2) covered by Issue No. 14 will not go to trial. This issue is answered in favour of the Respondent No. 1 and against the petitioner.

37. In view of my findings above, Issue Nos. 6-A, -6-B, 6-C, 6-D and 14, the other issues not being pressed by the learned counsel for the petitioner, do not survive. The consequence is that the election petition is dismissed on the preliminary Issue No. 2 above. The petitioner is not entitled to any of the reliefs claimed. The Petitioner is to pay cost of Rs. 500/-, over and above all other costs and fixed costs to the contesting Respondent No. 1, Bajuban Reang.

N. I. SINGH, Judge
[No. 82/TP-HP/1/80]
S. C. JAIN, Under Secy.

